IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 539 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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R.O.SHAH

Versus

MANHAR BAKERI & OTHERS

[Appearance:

1. Criminal Appeal No. 539 of 1989

MR KI SHAH for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

Miss Roopa Sreedhar for MR BS PATEL for Respondent No. 1-3

Mr. K.P. Raval, A.P.P. for Respondent No. 4-State

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. The appellant challenges the judgment and order dated 30th November, 1988 of the learned Judicial Magistrate First Class(Municipal), Surat in PFA Case no.22/1984 by which the accused respondents were acquitted of the offences under Section 7 of the Prevention of Food Adulteration Act with which they were charged.

2. The prosecution version was that the original complainant-appellant took samples of cardamom from the shop of the accused persons on 13th October, 1983 in the morning at 9.30. On analysis, the samples were found to be adulterated. A complaint was therefore filed on 19th March, 1984 by the appellant. According to the appellant the samples of cardamom were taken in plastic bags which were then put in bags of brown paper and sealed. The trial Court held that there was breach committed of the provisions of Rules 14 and 15 of the Prevention of Food Adulteration Rules 1955, and therefore, the outcome of the analysis could not be relied upon for convicting the accused persons.

3. It appears from the complaint Exh.1 and the deposition of the Food Inspector Ranjitlal U. Shah at Exh.23 that on 13th October, 1983 the complainant-Food Inspector alongwith his Peon had entered the shop in question in which there were three employees working. The name of the shop was Manhar Bakery and Dry Fruit Stores and its owner was Kandubhai Banabhai Mithaiwala who was out of station as per information given by the persons present in the shop. The complainant took samples of cardamom weighing 450 grams for which he paid a price of Rs.157.50ps. in cash and obtained a receipt Exh.31. He prepared Panchnama Exh.32. The sample was forwarded to the analyst and delivered there in a sealed condition. In paragraph 30 of his deposition, he has admitted that he had not put any seal on the plastic bags in which he had taken the samples nor did he put any label on those plastic bags. He had also not tied the plastic bags with string.

4. The report of the Public Analyst at Exh.37 showed that the sample was not in accordance with the standard fixed under the Prevention of Food Adulteration Rules and it also contained extraneous colouring matter. The effect of the report would depend upon whether there had been compliance of the Rules laying down the manner of taking samples and forwarding them. Under Rule 14 of the said Rules,"Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars; or any other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dried substance, entrance of moisture and shall be carefully sealed." Rule 15 provides that all bottles or jars or other containers containing samples for analysis shall be properly labelled and parcels shall be properly addressed. Admittedly, the samples were not taken in dried bottles or jars or any other suitable containers;

nor were the plastic bags in which the samples were collected, labelled or sealed. There was, therefore, violation of Rules 14 and 15 of the said Rules, as rightly held by the trial Court. The acquittal of the respondents, therefore, does not call for any interference by this Court. This appeal is, therefore, dismissed.

(R.K.Abichandani,J.)

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